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 Federal Communications Commission  
 Office of the Secretary

Reply Comments  
 IB Docket 02-324  
 IB Docket 96-261

EUROPEAN UNION

DELEGATION OF THE EUROPEAN COMMISSION

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1. The Delegation of the European Commission presents its compliments to the Department of State and has the honour to refer to the Notice of Proposed Rulemaking 02-285 in the matter of International Settlements Policy Reform and International Settlement Rates released by the Federal Communications Commission (FCC) on October 11, 2002, and on which the FCC has solicited comments in IB Dockets No. 02-234 and No. 96-261.
2. The European Communities welcome the opportunity to comment offered by the FCC and wish to recall the importance that they attach to open and competitive telecommunications markets at a global level. The European Communities share in particular with the United States a common interest in promoting lower falling rates for consumers both at national and international level. The European Communities have been working for many years towards open and competitive telecommunications markets both as regards their own market and vis-à-vis third countries' markets.
3. The European Communities underline, however, that the liberalisation and pro-competitive regulation of telecommunications services in third markets must be achieved not by unilateral actions but by negotiations between countries, primarily in the multilateral framework of the WTO, and by a policy of assistance towards other countries to reform their telecommunications regulatory environment, as exemplified by the international co-operation which takes place in the ITU.
4. Indeed, the European Communities and the United States have already negotiated and obtained the liberalisation and pro-competitive regulation of telecommunications services in a number of third markets under the Fourth Protocol to the General Agreement on Trade in Services (GATS) of the WTO. The European Communities and the United States are both now seeking, under the Doha Development Agenda in the WTO, commitments of further

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liberalisation of telecommunications services and adoption of the reference paper on pro-competitive principles for telecommunications regulation by third countries. The European Communities and the United States laid out their requests to all WTO members in July 2002 with that objective and expect offers from those countries by the end of March 2003. They are also negotiating the same commitments with countries wishing to accede to the WTO. There is now almost no telecommunications market with which the European Communities and the United States are not negotiating to obtain full liberalisation and pro-competitive regulation.

5. In parallel, the European Communities and the U.S. have endeavoured to bring assistance to third countries wishing to liberalise and regulate appropriately their telecommunications market.
6. Pursuant to this approach, the European Communities expressed in their comments made in March and August 1997 their firm opposition to the US FCC unilateral action under the International Settlements Policy and related policies (ISR and Benchmark order). The European Communities wish to renew today their strong opposition to such policies: the approach used and a number of the rules applied by the FCC are contrary to the spirit and the letter of the WTO-GATS rules as well as the GATS commitments made by the U.S. under the Fourth Protocol in 1997. The European Communities comments made in March and August 1997 explain in detail the reasons why.
7. The European Communities welcome the FCC initiative to review its rules governing bilateral relations between US carriers and their foreign counterparts, with a view to relaxing them. Indeed, the FCC acknowledges that "the existence of non-ISP arrangements...demonstrate that agreements that deviate from the ISP's requirements also can result in significantly lower settlement rates and more efficient arrangements". But this review would only represent a first step towards a needed revision of the policies themselves in the light of the WTO rules and GATS commitments made by the U.S.

Furthermore, the European Communities note with concern that the FCC is seeking comments on whether to take into account the ownership structure of a terminating dominant foreign operator (e.g. government ownership). This criterion is not relevant under WTO rules, nor would it contribute to our common objective to promote competition for the benefit of consumers: a competitive market will be achieved by introducing competition and applying appropriate pro-competitive regulation whereas insisting on privatisation, rather than help the process, risks delaying the introduction of real competition.

8. The European Communities also oppose the idea to impose unilaterally regulatory obligations on mobile termination of international services, as explored by the FCC in its NPRM and called for by some commentators. This is no more warranted for mobile termination than for fixed termination of international services. In addition to the objections raised above, the debate raised by mobile termination illustrates the practical risks of a unilateral approach. First the lack of discussion with third countries undermines the understanding of their regulatory frameworks, which sometimes work on some very different premises (e.g. a Calling Party Pays system vs. a Receiving party pays system in the case of mobile services), entailing very different situations (in the above mentioned example, for the payment mechanisms). In this respect, the European Communities stress that the application of the 'Calling Party Pays' system in the European Communities, also present in most countries in the world, has led to the rapid development of competitive mobile services and equipment markets, to the benefit of both consumers and industries, including from the US. Second, the approach fails to grasp the dynamics of the third country market, which the local regulator usually has much better means to assess. In short, the FCC cannot act in the place of national regulatory and competition authorities in third countries, neither from a legal point of view nor from a practical point of view.

9. However, the FCC may wish to share experiences with regulators from third countries. In the European Communities, national regulatory and competition authorities of the Member States, together with the European Commission, are in possession of adequate regulatory and competition policy tools to examine markets and address non-competitive situations, under both the current and the new regulatory framework for electronic communications networks and services, as well as under the national and EC competition rules. These tools are used effectively, as can be seen from the implementation reports issued by the European Commission, which the FCC will be aware of. The FCC clearly follows with interest ongoing actions as can be noted from its references in the NPRM. Under the new framework, National Regulatory Authorities (NRAs) will be further empowered as they will carry out an analysis of the relevant markets identified by the European Commission or by the NRAs themselves as being susceptible to ex ante regulation (for example, call termination on public mobile telephone networks, according to Annex I of the Framework Directive) and add, if appropriate, if they are found not to be effectively competitive. The European Communities would like to underline here the benefits of a systematic analysis of competition in relevant markets, without any a priori and possibly arbitrary regulatory segmentation.

10. Finally, the European Communities reserve their rights under the WTO to challenge any actions by the FCC that are not compatible with the WTO obligations of the United States. The Delegation of the European Commission would be grateful for the views of the Department of State, and requests that this Note Verbale be transmitted to the Federal Communications Commission so that it can be part of the proceedings in this matter and put in the public record.

11. The Delegation of the European Commission avails itself of the opportunity to  
renew to the Department of State the assurance of its highest consideration.



Washington D.C.

13 February 2003